STATE OF MAINE
CUMBERLAND, ss.

UNIFIED CRIMINAL DOCKET
DOCKET NO. CD-CR-18-2275

STATE OF MAINE

v.

ORDER ON DEFENDANT'S MOTION TO SUPPRESS

JOHN WILLIAMS,
Defendant

I. Introduction:

1. Defendant John Williams (hereinafter "Defendant") was indicted on June 7, 2018, for intentionally or knowingly causing the death of Deputy Sheriff Eugene Cole on or about April 25, 2018, in violation of 17-A M.R.S. §§ 201(1)(A) and 1252(5).

2. Defense counsel filed the pending Motion to Suppress dated August 17, 2018 seeking to suppress "any and all statements illegally obtained by officers" upon grounds that Defendant's statements were not voluntary. Specifically, Defendant contends that the officers obtained statements from him "through brutal physical force and threat of same" and further that he "was not physically and mentally able to provide a voluntary statement to the detectives due to his withdrawal from opiates." Consequently, Defendant argues that his statements "were not given knowingly, understandably and voluntarily," and thus his statements must be suppressed, citing *State v. Wiley*, 2013 ME 30, ¶ 15, 61 A.3d 750; *State v. McCarthy*, 2003 ME 40, 819 A.2d 335. Included in the evidence sought to be suppressed was the "re-enactment" of the crime performed after the questioning with Maine State Police detectives Andrews and Quintero conducted at the Waterville Police Department, as well as statements made during a "cigarette break" and during the ride to the prison in Warren.

3. A testimonial hearing was conducted on February 28 through March 1, 2019 and April 8th, 2019 concerning the Motion to Suppress. The undersigned took the matter under advisement, with both sides having the opportunity to file post-hearing memoranda. The Court enters this **Order** on Defendant's Motion to Suppress after the opportunity to review the transcript of the hearing, the Court's file, the exhibits entered into evidence, including the video of the interrogation of the Defendant at the Waterville Police Department, the memoranda filed by both sides, and pertinent case law, for the reasons set forth below.

II. Findings of Fact:

4. Defendant was arrested shortly before noontime on April 28, 2018, after being the focus of a "manhunt" that was initiated during the early morning hours of April 25, 2018, in Norridgewock, Maine. Defendant was the only suspect for the murder of Corporal Eugene Cole of the Somerset County Sheriff's Department.

5. Defendant was discovered in a fairly-dense wooded area in Norridgewock outside of a vacant camp by a search party composed of seven law enforcement officials. Defendant, barefoot, bare-chested, and wearing only a pair of "long johns," was apprehended while he was walking outside the camp holding a clear plastic tote, apparently gathering snow for drinking water.

6. Defendant obeyed the commands of several of the law enforcement officials to stop and lay prone on the ground. Defendant was quickly surrounded by the officers, one of whom placed handcuffs on the Defendant as he lay face-down on the ground. The Defendant was held down, naked[1] on the ground for fifteen to twenty minutes while the search party made arrangements for his transport.

7. The Court rejects the argument of the defense that any of the law enforcement officials "beat and pummeled" the Defendant and/or "kicked [the Defendant] in the head and face, among other things, and caused severe bruising...", as there was little to no objective evidence to support such contentions.

8. The Court does find that Defendant was punched in the face at a time when he was handcuffed and offering no significant resistance, if any at all, to the officers. The punch may have occurred at a time when the officer who struck him didn't realize Defendant could not offer up his other hand to be handcuffed because another officer was restricting Defendant's hand by placing his foot on the hand. This Court makes no findings regarding whether the foregoing occurred, or whether it was a "sucker punch" inflicted when both of Defendant's hands were already handcuffed, as only the Defendant and the officer who struck Defendant know for certain.

9. The Court also finds the Defendant was taunted by certain members of the search party once safely apprehended. The Court rejects the rationale provided for the now infamous photograph of Defendant taken by a member of the search party, namely that a photograph was necessary to confirm that the Defendant was indeed the suspect law enforcement had been searching for over three days.[2]

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[1] Officers testified that Defendant's long johns were removed to search him for weapons. The long johns were not put back on Defendant due to his defecating himself at some point before they were removed such that the long johns were soiled.

[2] To the Court's recollection, every officer who was asked during the hearing stated that they were sure the Defendant, once arrested, was the man they had been searching for.

10. Once other members of law enforcement arrived at the scene where Defendant was being held, one of them placed Cpl. Cole's handcuffs on the Defendant in addition to the cuffs he already had on. Defendant was escorted out of the woods to a "command post" that had been set up on a road. The walk out of the woods took approximately fifteen minutes, with the majority of the walk occurring with the Defendant naked and barefoot. Before the Defendant was taken into the command post he was wrapped up in some kind of blanket so that he was covered when he was escorted into the command post area.

11. Shortly after Defendant arrived at the command post he was turned over to Detectives Andrews and Quintero of the Maine State Police (hereinafter "Andrews" and "Quintero"). Defendant was transported to the Waterville Police Department by the detectives, the trip taking approximately nineteen minutes. An interrogation of the Defendant that lasted approximately ninety six minutes by the detectives subsequently took place at the police station. It appeared at the suppression hearing that the entire interaction between the Defendant and the detectives while they were in a room at the police station was captured by video.

12. On the way to the police station the Defendant answered "no" to the question "are you injured in any way?" Defendant answered "yeah" when asked "do you want to talk to us John?"

13. In route to the police station the detectives inquired if Defendant was hungry and thirsty and wanted some food and something to drink. The Defendant responded in the affirmative. The detectives also checked to see if Defendant was allergic to any specific kind of food "or anything you can't eat." Defendant answered in the negative.

14. The detectives also asked if Defendant had any questions of them, and the Defendant answered no. They also told the Defendant if he found himself hot or cold or in need of something to let them know.

15. Defendant answered in the affirmative to the question of whether he knew where he was both while being transported to the station as well as when the three arrived in Waterville, and named the city.

16. Defendant complained that his hands were hurting while on the way to the station and also stated "[Y]eah, they did, they did a number on me." Defendant also stated that there was nothing in particular he wanted for food, only that he was very hungry. The officers asked him if there was anything he wanted to drink in particular, and the Defendant responded "water...fruit punch."

17. At the police station, Defendant was subsequently "checked out" by medical personnel[3] and cleared to be interviewed. The Defendant's interaction with the medical personnel lasted approximately five minutes. Defendant

[3] One of the medical personnel told the detectives "I think, yeah, he's medically clear..." after taking defendant's blood pressure, temperature, pulse, and blood sugar reading.

declined to be checked out further by the medical personnel, answering in the negative when asked if he had any complaints of pain.[4]

18. Water was provided to the Defendant by Quintero at approximately the 8:41 mark on the video after Quintero removed one set of handcuffs from the Defendant and adjusted the other set of handcuffs from Defendant's back to front. Andrews then reminded Defendant that he did not have to talk to the detectives, "but we'd kind a like to hear what you have to say...okay, do you want to chat with us?" Defendant responded in the affirmative, but that he wanted some food. Quintero replied, "[Y]eah, we're working on that."

19. Both detectives were in plainclothes. For the majority of the interrogation only Andrews, Quintero, and the Defendant were present. The detectives did not raise their voices during the interrogation, or do anything that could be described as "aggressive." The detectives did not engage in any "trickery" or tell falsehoods to the Defendant in an effort to get him to talk to them.

20. Defendant hung his head during the entire reading of his *Miranda* rights[5] pursuant to *Miranda v. Arizona*, 384 U.S. 436, 461, 86 St. Ct. 1602, 16 L. Ed. 2d 694 (1966). Andrews began to read Defendant his *Miranda* rights from a *Miranda* card at approximately the 9:26 mark on the video. The Defendant responded after each question that he did understand his rights as read to him, and also explained appropriately what each right meant. After being given his *Miranda* rights Defendant responded "yes" twice when asked whether he wanted to talk to the detectives. The advising of Defendant's *Miranda* rights and his answers concerning his understanding of those rights took less than two minutes, with the rights being administered beginning at approximately the 9:26 mark of the video and ending at approximately 10:50.

21. Subsequently the Defendant answered appropriately various background questions from Andrews. A blanket was brought into the room for the Defendant to put over his shoulders and upper body at approximately the 16:30 mark on the video by Quintero.

22. Defendant himself first brings up the slain Corporal after first mistakenly referring to him as "David Cole" in response to a question from Andrews regarding what Defendant was running from at approximately the 17:43 minute mark on the video. Andrews follows up with a very open-ended question,[6] to which Defendant gives a summary of his interaction with Cpl. Cole on the night in question, ending with "at which point I brandished the firearm,

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[4] Defendant did say his wrists continued to bother him.

[5] In point of fact Defendant hung his head or looked down during most of the interaction with the detectives in the room.

[6] "Tell us about that."

and ah, shot David Cole."[7] This was at approximately the 19:04 mark on the video, or less than nine minutes after Defendant waived his *Miranda* rights and began answering questions according to the State.

23. Andrews continues to ask Defendant open-ended questions, and Defendant responds by telling him what he did after the shooting.

24. Food, fruit punch, and clothing were delivered to the interrogation room at approximately the 22:45 mark on the video, and Defendant drank some more and ate. Defendant is told "just say whenever you want to put them on [the clothing], you can do that."

25. Eventually Andrews asked the defendant to "[T]ell us what happens right when you get there, walk us through it, please." Defendant responds with more details.

26. Defendant does not exhibit any fear or resistance to speaking with the detectives while they ask him questions concerning the shooting, or at any other time during the questioning.

27. Defendant used words like "vendetta" and "brandish" while speaking with the detectives.

28. Defendant does not decline to answer any questions posed to him by the detectives, nor does he answer any question in an incoherent or nonsensical manner. Similar to the situation found in *State v. Hunt*, 2016 ME 172, ¶ 11, the video taken does not disclose any bizarre, psychotic, or drug-induced behavior on the part of Defendant, who appears to be rational and responded to questions with appropriate answers.

29. Later Andrews asks if Defendant wants to put some clothes on, to which he responds "Yeah, sure." It is at this point in the interrogation, at approximately one hour eighteen minutes into it, that Andrews brings up the issue of having defendant perform a "walk-through of what happened." Andrews asks Defendant if he "would be willing to do that, to show us exactly what happened and walk us through step by step?", to which defendant responds "yeah."

30. Approximately nine minutes later, Andrews brings up the re-enactment again, and asks Defendant, "[O]kay, is that okay?" Defendant responds [C]an I ah…I'm really tired, take a nap, like a quick nap, or…I'm so fuckin' tired."

31. Andrews responds that he knows Defendant is tired, and that "actually, if we can just, we can get this taken care of we could probably get on with the rest of what's going to happen."

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[7] Later Defendant acknowledges he misspoke, meaning "Eugene Cole."

32. Defendant responds with "Just want to do, do the best for you guys with this."

33. Defendant again tells the detectives "I'm tired…it's like, if I could just get like 30 minutes of sleep…just let me curl up on the floor and I'll be out." It is difficult at this point to hear exactly what Defendant is saying due to his voice being so low.

34. Andrews responds "yeah," but when the Defendant starts to tell him "Just need a-", Andrews interrupts by asking Defendant when was the last time he used drugs. Defendant responds it was days ago.

35. Again in response to Andrews telling him "so again, before we get going out there I just want to make sure, you have to use the bathroom at all or…No, you're good?", Defendant says "Just need to take a nap."

36. Andrews tells Defendant "and again, I appreciate you're tired…um, we'll put some socks on we get this over and done with and then we can get on with the rest of what's going to happen, okay?"

37. Defendant does not respond to this.

38. After a period of time Andrews states "Do you have any questions other than, *I know you're going to say a nap*, but do you have any questions for me?" No response is heard from Defendant initially, then he says "No."

39. Thereafter Defendant is taken outside to the parking lot of the Waterville Police Department, read his *Miranda* rights again, and he appropriately explains what each right means to him. Then to the question "Now, having those rights which I just explained to you in mind, do you wish to continue to answer our questions and participate in what we're going to do out in the parking lot?" Defendant answers, "I do." The Defendant also informs the detectives "I don't think I'm going to be strong enough to stand up." Andrews responds by telling Defendant "[W]ell, we'll do it as best we can, okay." Quintero tells Defendant that they "can get a chair out here in case you feel like you need it, we can do that." The Defendant responds "Yeah." Quintero tells Defendant "Okay. And if you feel weak at any time just let me know I'll come grab you, okay."

40. The Defendant thereafter participates in the re-enactment. The Defendant has a cigarette break, and ultimately is transported to Maine State Prison. The trip to the prison takes approximately 84 minutes. On the way, the detectives ask Defendant whether it's "ok if we continue to ask you questions?" Defendant continues to tell the officers he is "pretty tired" and that he is "probably gonna try takn' a nap though."

41. Defendant apparently sleeps for at least a portion of the trip to the prison.[8] Defendant tells the detectives "you guys are treating me very well" in response to the question "how do you feel you've been treated by everybody?" The last words of the Defendant on the tape are "very kindly, thank you..." in response to "Did we treat you nicer than you expected, meaner than you expected?"

42. The Defendant was evaluated by Dr. April O'Grady, clinical and forensic psychologist, for nearly six hours over a two day period on May 22 and June 1, 2018. The Defendant described his conduct after the shooting to Dr. O'Grady as "from there on, I was just running and hiding," and that he spent three days getting high in the woods.

43. The Defendant in his interview with Dr. O'Grady describes withdrawals from heroin as "the worst" and including seizure-like spasms, and stated he had thought of killing himself when withdrawing in the past in order to stop the pain.

44. He also described withdrawal symptoms to Dr. O'Grady as including sweats, nausea, aches, and anxiety. He described experiencing "overwhelmingly" painful withdrawal symptoms when not using. Finally, Defendant told the doctor he had "started to withdraw" while in the woods after the shooting after he had used all of the heroin.

45. The video of the Defendant after his arrest, however, does not show him exhibiting any of the symptoms he described to Dr. O'Grady when Defendant was suffering from withdrawal in the past.

46. Defense expert Dr. John Steinberg was asked to perform an evaluation of the Defendant by reviewing multiple reports, transcripts, and videos involving his arrest and subsequent interaction with law enforcement. Dr. Steinberg was asked with regard to his review of the materials mentioned above to determine if Defendant's "acute intoxication and subsequent withdrawal would preclude his ability to make rational decisions or would interfere with his cognitive abilities."

47. In his written report, Dr. Steinberg opined that the Defendant "was suffering from acute and severe withdrawal from both cocaine and heroin dependency at the time of his apprehension on 4/28/18." He went on to opine that Defendant's "opiate withdrawal symptoms were muted by his profound fatigue and his cocaine withdrawal symptoms." Dr. Steinberg ends his written report by stating that on April 28, 2018,

> due to combined drug withdrawals from opiates and stimulants, profound fatigue, and starvation, [Defendant] had significant impairment of his ability to make rational decisions and on 4/28/18 had significant diminution of his ability to make rational voluntary

[8] This portion of the recording is audio only.

and knowing decisions, with respect to his statements at interview, such that he could not make decisions at the competency level of a rational, competent adult.

48. Dr. Steinberg has not met Defendant personally or had any direct contact with him. However, according to the doctor this lack of direct contact with the Defendant is not unusual, as he has been asked "routinely" to render forensic opinions regarding the effects of substance abuse or intoxication withdrawal dependency without being provided an opportunity to examine the particular individual.

49. Dr. Steinberg during his testimony opined that being given the opportunity to sleep "was one of [Defendant's] biggest concerns . . . he was ready to lay down and go to sleep" during his interrogation. The doctor also opined that,

> I personally think he would have done anything to get to sleep. I was most impressed by the fact that he even asked can I just lay down on the floor and sleep. And the detectives continued to say, when we're finished here you'll be able to sleep. That was his overriding concern, was he just wanted to sleep . . . one of the officers that was interviewed . . .said he looked like a zombie.

50. Dr. Brian Cutler is a professor in the faculty of social sciences and humanities at the University of Ontario Institute of Technology. He was asked to opine "how the conditions experienced by the defendant before and after the shooting and the conditions of his arrest and capture would affect an individual's ability to resist pressure to confess in the context of police interrogation." His resulting report and testimony discussed how physical and social isolation, sleep deprivation, food deprivation, and physical pain and discomfort are

> factors that compromise an individual's ability to self-regulate and can be expected to influence an individual's behavior in an interrogation setting. Specifically, these conditions enhance individuals' susceptibility to social influence, impair cognitive functioning, and lead to impulsive, short-term decision-making that may not support an individual's long-term self-interests.

51. Dr. Sara Miller is Director of the State Forensic Service. She evaluated the Defendant to address the issue of whether or not "defendant had the capacity to voluntarily waive his *Miranda* rights and to voluntarily make statements to law enforcement officers on April 28, 2018." She had conducted one, perhaps two, prior such evaluations.

52. Dr. Miller conducted her evaluation of the defendant on February 19, 2019. She spent a total of two hours and twenty minutes with Defendant. Dr. Miller had a variety of records and materials that she reviewed as part of the evaluation process, all of which are more fully described in her report dated March 26, 2019.

53. Dr. Miller confirmed that there were no concerns that Defendant was "of below average intellectual functioning." Defendant was able to demonstrate knowledge and appreciation of the *Miranda* warning.

54. The Defendant contended during his evaluation with Dr. Miller that he had been in more pain and had experienced "more withdrawals" than what he had represented to the detectives during his interrogation on April 28, 2018.

55. Dr. Miller testified that Defendant indicated to her that he disregarded information contained in his *Miranda* warnings because he believed the police would not honor his rights if he invoked them.

56. Dr. Miller described Defendant's lack of sleep after the shooting until he was apprehended by law enforcement as "fairly extreme." Dr. Miller also equated Defendant asking the detectives if he could "just curl up on the floor here" as a request to stop the interview/interrogation.

57. Dr. Miller ended her testimony by opining that the Defendant's version of what he was thinking at the time of the interrogation was "clinically possible," but that were "certainly reasons why he might be portraying his perception at the time differently than he actually perceived it."

III. Conclusions of Law:

58. As both sides acknowledge, a statement, including a confession, of a defendant is voluntary if it results from the free choice of a rational mind, if it is not a product of coercive police conduct, and if under all of the circumstances its admission would be fundamentally fair. *State v. Sawyer*, 2001 ME 88, ¶ 8, 772 A.2d 1173; *State v. Mikulewicz*, 462 A.2d 497 (Me. 1983).

59. A confession is admissible in evidence only if it was given knowingly and voluntarily, with the State having the burden of proving it was given voluntarily beyond a reasonable doubt. *State v. Wiley*, 2013 ME 30, ¶ 15, 61 A.3d 750; *State v. Rees*, 2000 ME 55, 748 A.2d 976. This is a higher standard than is required by federal law, the basis of the more protective standard being that

> [t]he constitutional privilege against self-incrimination reflects a high priority commitment to the principle that excluded as available to government is any person's testimonial self-condemnation of crime unless such person has acted 'voluntarily' i.e., unless he has 'waived' his constitutional privilege against self-incrimination by choosing, freely and knowingly, to provide self-condemnation by utterances from his own lips.

Rees, 2000 ME 55, ¶6, 748 A.2d 976 (quoting *State v. Collins*, 297 A.2d 620, 626 (Me. 1972).

60. The voluntariness requirement gives effect to three overlapping, but conceptually distinct values: it discourages objectionable police practices; it

protects the mental freedom of the individual; and it preserves a quality of fundamental fairness in the criminal justice system. *Mikulewicz*, 462 A.2d at 500; *Lego v. Twomey*, 404 U.S. 477 (1972) ("The use of coerced confessions, whether true or false, is forbidden because the method used to extract them offends constitutional principles.")

61. A Court is to determine the voluntariness of a confession based upon the totality of the circumstances, including

> [b]oth external and internal factors, such as: the details of the interrogation; duration of the interrogation; location of the interrogation; whether the interrogation was custodial; the recitation of *Miranda* warnings; the number of officers involved; the persistence of the officers; police trickery; threats, promises or inducements made to the defendant; and the defendant's age, physical and mental health, emotional stability, and conduct.

State v. Lavoie, 2010 ME 76, ¶ 18, 1 A.3d 408.

62. The exclusionary rule of

> 'involuntary' confessions is grounded in both the privilege against self-incrimination, guaranteed by the Fifth Amendment to the United States Constitution, and article I section 6 of the Maine Constitution; and the due process clause of the Fourteenth Amendment to the United States Constitution and article I, section 6-A of the Maine Constitution.

State v. Hunt, 2016 ME 172, ¶ 18, 151 A.3d 911.

63. Thus, there is a distinction between those statements that must be excluded pursuant to the Fifth Amendment because they are the product of compulsion, and those statements that must be excluded because their admission would otherwise create an injustice. *Id.* ¶ 19. In this case Defendant's statements are challenged both on "compulsion" grounds as well as upon grounds that Defendant was suffering the effects of not eating, opioid withdrawal, and significant fatigue. Accordingly, "where the Fifth Amendment analysis seeks to determine whether the defendant's confession was compelled," a due process analysis instead seeks to determine whether the State has obtained the confession in a manner that comports with due process. *State v. McConkie*, 2000 ME 158, ¶ 9 n.3, 755 A.2d 1075. This analysis recognizes that the "Due Process Clause . . . prohibits deprivation of life, liberty, or property without fundamental fairness through governmental conduct that offends the community's sense of justice, decency, and fair play." *Id.* ¶ 9.

64. There are in the undersigned's mind four specific instances when Defendant made statements that the defense challenges the admissibility of. The Court will accordingly discuss each instance in turn:[9]

(A) Statements Made by Defendant to Detectives Andrews and Quintero Inside Waterville Police Station.

65. Defendant was transported to the Waterville Police Station by Detectives Andrews and Quintero, two law enforcement officials who had nothing to do with the circumstances surrounding Defendant's arrest. The entire time that elapsed from Defendant first being observed by the search team until he was walked into the Waterville Police Station was apparently approximately one hour or less. The Defendant was not asked questions by the search team, nor did he apparently make any incriminating statements.

66. The Defendant was read his *Miranda* rights at the station by Andrews. Defendant explained what each right meant to him in a lucid, appropriate fashion. Both detectives engaged Defendant in a conversational tone during the interrogation.

67. It is settled law that consumption of, or addiction to, drugs does not *per se* render invalid an otherwise sufficient waiver of rights. *State v. Ashe*, 425 A.2d 191 (Me. 1981); *United States v. Palmer*, 203 F.3d 55, 61 (1st Cir. 2000)("Even if defendant was in a weakened condition because of his withdrawal symptoms, it does not necessarily follow that his post-arrest statements were involuntary.")

68. Other courts have held that opioid withdrawal does not render a confession inadmissible unless the degree of withdrawal has "risen to the degree of mania or has resulted in the sudden loss of defendant's capacity to understand either the nature of his legal rights or the consequences that would follow from their waiver." *People v. Johnson*, 168 Misc. 2d. 81, 89 (N.Y. 1995).

69. As the Law Court in *Ashe* stated, the particular circumstances of each case must be evaluated to determine whether a defendant's drug-related condition made him incapable of acting voluntarily, knowingly and intelligently. 425 A.2d at 194. As was the case in *Ashe*, the Defendant here appeared lucid and rational,

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[9] As the Court understands it, the defense is **not** contending that Defendant did not understand his *Miranda* rights; rather, the defense contends that Defendant "did not knowingly and voluntarily waive his *Miranda* rights given the circumstances under which he was interrogated." Specifically, the defense's contention is that Defendant "waived" his *Miranda* rights "for reasons that are not legally knowing and voluntary." The Court understands that the "reasons" defense counsel is referencing are the alleged concern of Defendant that he would receive "another beating" if he didn't cooperate with the detectives and/or Defendant was suffering from opioid withdrawal as well as from lack of food, drink, and sleep. The undersigned finds that defendant by a preponderance of the evidence knowingly, intelligently, and voluntarily agreed to speak to the detectives on April 28, 2018 after he was in custody and subject to custodial interrogation, thus waiving his rights under *Miranda*. *State v. Ormsby*, 2013 ME 88, ¶ 27, 81 A.3d 336. The issue for the undersigned is whether Defendant's statements made during the four instances set forth *infra* were of a voluntary nature. *Id.* ¶ 28.

able to respond coherently to questions, and able to engage in a narrative account of the events in question. *Id.* As was the case in *Ashe*, there is virtually no evidence that such drug use as Defendant may have made of drugs had caused "actual impairment of his physical or mental condition at the time of the interrogation." *Id.*

70. Defendant contends that he cooperated with the detectives because he feared reprisals if he did not. It is, however, well settled that under appropriate circumstances, the effect of an initial impropriety by law enforcement, even a coercive one, in securing a confession may be removed by intervening events, with the result that a subsequent statement is rendered "free of the primary taint" and thus admissible into evidence as the expression of a free and voluntary act. *Leon v. State*, 410 So. 2d 201, 203 (Fla. Dist. Ct. App. 1982); *Lyons v. Oklahoma*, 322 U.S. 596 (1944). Factors that others courts have found to be probative in deciding whether a confession was to be considered involuntary given after a Defendant was treated unreasonably by law enforcement include whether the violence alleged was *not* inflicted in order to secure a confession or provide other evidence to establish a defendant's guilt; whether the force complained of was unrelated to whether the defendant confesses or not; the time that transpired between the force and the confession; whether the confession was obtained by entirely different officers than those who employed the coercive tactics; and whether the persons who applied the coercion were not present at the time of the statement. *Leon*, 410 So. 2d at 203-04.

71. Other courts have held that "a confession is not rendered inadmissible as a matter of law because of an assault upon the defendant which occurred prior to, disconnected with, and apparently unrelated to the subsequent confession." *People v. Richardson*, 917 N.E. 2d. 501, 516-517 (Ill. 2009). As the Illinois Supreme Court held, "[a]lthough physical force is certainly a defining circumstance, and possibly a dispositive one, its incidental use can sometimes be excused where the other circumstances surrounding the interview show a voluntary confession. The relevant inquiry is the totality of the circumstances. Courts look to factors such as gaps in time between the use of force and the confession, changed interrogators or location, and renewed *Miranda* warnings." *Id.* at 517.

72. Here, the Court finds that the violence at the site in the woods where the Defendant was apprehended was *not* inflicted to secure a confession. The punch that occurred was unrelated to whether Defendant confessed or not, in fact, he was not asked any substantive questions while in the woods. The confession was obtained by entirely different law enforcement officers than were present in the woods with the Defendant. The officers in the woods had no further interaction with the Defendant once he was handed off to the detectives, and were not present at the time of his statement inside the Waterville Police Station. *See People v. Hall*, 78 Cal. App 4th 232 (Cal. Ct. Ap. 2000).

73. In this case after considering the evidence the undersigned is convinced beyond a reasonable doubt and so finds that the Defendant's statements made to the detectives, up to the 1:28:46 mark on the video, were voluntary in nature. Thus, the Motion to Suppress Defendant's statements **up to that point is denied.**

(B) Statements/Conduct of Defendant in (1) Agreeing to and "Acting Out" the Shooting with Law Enforcement Outside Waterville Police Department; (2) Statements Made During the "Cigarette Break; and (3) Statements Made in Route to Maine State Prison.

74. The Defendant's eventual "agreement" to conduct a "re-enactment" of the shooting presents more concerns to the Court than the statements made by Defendant to the detectives shortly after he arrived at the police department and was read, and from his responses understood and waived, his *Miranda* rights. Defendant repeatedly told the officers he was very tired and wanted to sleep. The detectives in response either changed the subject or indicated in essence that once they were through with Defendant he would be able to sleep. As described at the scene of the arrest, the Defendant "looked like a zombie." As the interrogation continued the video made it clear Defendant appeared to be dozing off on multiple occasions. *Compare State v. Kierstead*, 2015 ME 45. The Defendant questioned whether he would be able to stand; the detectives told Defendant they would come "grab you" if he felt weak.

75. The Defendant's weakness, stumbling, and dozing off are important considerations to the Court. *See State v. Kierstead*, 2015 ME 45, ¶¶ 16-17, 114 A.3d 984 (where the Law Court affirmed the trial court's determination that the defendant's statements to law enforcement were voluntary because his mental faculties were intact at the time he made the statements, evidenced by the facts that he never "nodded off or appeared drowsy" and had no difficulty with balance or ambulation.). Case law has repeatedly emphasized the effect that "slowly mounting fatigue" may be expected to have on a person's judgment and will. *Spano v. New York*, 360 U.S. 315, 322 (1959); *People v. Anderson*, 364 N.E.2d 1318, 1321 (N.Y. 1977); *People v. Johnson*, 636 N.Y.S2d 540, 545 (N.Y. Sup. Ct. 1995).

76. This is a much closer call for the undersigned than the initial interrogation of the Defendant inside the Waterville Police Department. The undersigned has watched the video on multiple occasions, read the transcripts entered into evidence, and reflected on the pertinent case law, not only in the State of Maine but elsewhere as well. After carefully considering all of the evidence, the undersigned simply **cannot find beyond a reasonable doubt** that, given the totality of the circumstances, Defendant's statements to law enforcement beginning at approximately the 1:28:47 mark of the video, including the re-enactment of the shooting, as well as statements made afterwards during a "cigarette break" and on the way to the prison, were voluntary under *State v. Collins*, 297 A.2d 620, (Me. 1972) and its progeny. Because of that, the Court **grants** the Defendant's Motion to Suppress as to those statements and re-enactment. *See also State v. Annis*, 2018 ME 15, ¶ 13, 178 A.3d 467 (where the Law Court concluded that admitting the confession, after considering all the circumstances, was fundamentally fair).

IV. Conclusion:

77. "I know there's no happy ending." Defendant uttered this to the detectives, his head hanging down, at approximately 46:11 of the video. Tragically, this statement is arguably the most accurate, and undoubtedly the saddest, statement made on the entire video of Defendant with the detectives. The Motion to Suppress, for the reasons stated above, is **denied in part and granted in part.**

So Ordered.

Date: 4/26/19

BY Robert E. Mullen

Robert E. Mullen, Deputy Chief Justice
Maine Superior Court